

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5221 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
Nos. 1 to 5 No.

MANUBHAI DAHYABHAI PARMAR

Versus

COMMISSIONER OF POLICE

Appearance:

MR MUKESH D RAVAL for Petitioner

MS.SIDDHI TALATI, AGP. for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 16/12/98

ORAL JUDGEMENT

In this writ petition under Article 226 of the Constitution of India the prayer is to issue a writ in the nature of certiorari for quashing detention order dated 3.6.1998 contained in Annexure "A" and a writ in the nature of habeas corpus for immediate release of the petitioner from illegal detention.

The brief facts are that on 3.6.1998 the Commissioner of Police, Ahmedabad City passed the detention order which is under challenge. This order was passed under section 3(2) of Prevention of Antisocial Activities Act (for short PASA Act) against the petitioner and another. The grounds of detention were furnished simultaneously inter alia to the petitioner. The grounds of detention as contained in Annexure "C" inter alia show that one case under Bombay prohibition Act was registered against the petitioner. In this case 280 bottles of foreign liquor were recovered from the petitioner. In addition to this statements of two witnesses were also considered by the Detaining Authority. From the above material the Detaining Authority came to the conclusion that the petitioner is a bootlegger and his activities in connection with that business were prejudicial to maintenance of public order. As such the impugned order was passed. The impugned order has been challenged on two grounds.

The first ground is that the alleged activities of the petitioner do not amount to disturbance of public order. The contention has force. The petitioner on the basis of registered case under Prohibition Act in which 280 bottles of foreign liquor were recovered from him can be said to be bootlegger within the meaning of section 2(b) of the PASA Act. However, simply on account of this activity or sole activity the petitioner could not be preventively detained under PASA Act. Further requirement is that in view of section 3(4) and explanation to sub-section (4) of section 3 of the PASA Act, the activities of the petitioner must be prejudicial to maintenance of public order. For this, the only registered case under Bombay Prohibition Act, cannot be taken into account because nothing flows from the grounds of detention, that, at the time of raid and recovery of huge quantity of foreign liquor from the petitioner he created situation or any situation which was prejudicial for maintenance of public order. There is no allegation that at that time the petitioner offered resistance in search and seizure. Consequently, registered offence cannot be considered to be an activity prejudicial for maintenance of public order. It was simply law and order problem which was effectively tackled inasmuch as the petitioner was booked under relevant sections of the Bombay Prohibition Act.

Then comes statements of two witnesses who narrated incidents of 1.4.1998 and 7.5.1998. It is hardly essential to reproduce those statements. Suffice it to say that the narrations of the two witnesses are

hardly sufficient to come to subjective satisfaction that the petitioner created situations on those two occasions which were prejudicial for maintenance of public order. So called threat given by the petitioner to the witnesses did not travel beyond situation prejudicial for maintenance of law and order. It had no effect on disturbance of even tempo of the life of the locality or community nor public tranquillity or peace was disturbed on these two occasions. By mere recital that atmosphere of fear was created it cannot be said that the situation was prejudicial for maintenance of public order.

Thus, the activities of the petitioner cannot be said to be prejudicial for maintenance of public order and as such the order of preventive detention cannot be sustained.

The second ground is that the representation of the petitioner was returned by the State Government on untenable ground that, it did not bear signature or thumb impression of the detenu. The contention has been that non consideration of representation of the detenu till date has rendered the detention and continued detention of the petitioner illegal.

The communication dated 25.6.1998 was sent by the Section Officer of the Home Department to the Advocate of the detenu. In this communication, it was mentioned that the representation dated 18.6.1998 addressed to the Home Minister was received but it was returned because signature or thumb impression of the detenu was not obtained. The Advocate of the detenu was desired to resubmit the representation after obtaining signature or thumb impression of the detenu. Thereafter, it was likely to be considered.

This plea was incorporated by way of amendment in the writ petition carried out on 15.9.98 but no counter affidavit to this amendment has been filed. In view of the communication dated 25.6.98 filed by learned Counsel for the petitioner it can be said that the representation of the detenu was returned on untenable ground and no compliance was needed from the Advocate. Once representation was sent by the Advocate under the authority of the detenu the Advocate was not required to obtain thumb impression or signature of the detenu. The representation should have been considered by the State Government on merits. Since, it has not been done so far and further because the detenu or his Advocate was not required to resubmit the representation after making compliance of an uncalled for information by Section

Officer, the detention order becomes invalid. Non consideration of representation on such technical ground was not upheld by the Apex Court in Balchand Chorasias Vs. Union of India, AIR 1978 SC Pg.297.

For the reasons stated above the impugned order cannot be sustained. The writ petition therefore succeeds and is hereby allowed. The impugned order of detention dated 3.6.1998 as contained in Annexure "A" to the writ petition is hereby quashed. The petitioner shall be released forthwith unless wanted in some other case.

Sd/-

(D.C.Srivastava, J)

m.m.bhatt